MPT ITEM 1

Sample Answer 1

To: Deanna Gray, District Attorney

From: Examinee

RE: State v. Iris Logan

Memorandum

I. Whether we should charge Iris Logan (hereafter Logan or the Defendant) with Robbery?

Under the Franklin Criminal Code § 901 (hereafter the Code), Robbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear. Robbery is a felony.

Robbery requires proof of four elements: (1) intentional or knowing non-consensual taking of (2) money or other personal property (3) from the person or presence of another (4) by means of force, whether actual or constructive. *Driscoll.* (stating that under Franklin law, violence is coextensive with force); *See also* Schmidt (holding the force necessary to constitute robbery is the posing of an immediate danger to the owner of the property). And further, the immediacy of the danger can be demonstrated either by putting the victim in fear or by bodily injury to the victim. *Driscoll.* Ultimately, the distinction between theft and robbery is the use of force or threat of physical harm because taking something stealthily without the owner's knowledge is simply theft, but shaking the owner or struggling with the owner while trying to take the item from the owner is robbery. *Id*.

In our case, the Office of the District Attorney (hereafter the DA's Office) should probably charge the Defendant with Robbery. As stated by Ms. Tara Owens, the Defendant took Ms. Owens' purse from her person, intentionally did so by coming up behind Ms. Owens and demanding Ms. Owens to "Let [the Defendant] have that purse." Likewise, the Defendant did not have consent, and moreover, the Defendant put Ms. Owens in immediate danger by the bodily injury (she sprained her wrist as the Defendant pulled the purse off of her). Therefore, the Defendant committed Robbery and should likely be charged accordingly.

You should note, however, that the Defendant will probably try to argue that she did not commit robbery considering the dispatcher did not use the word Robbery, but rather, purse snatching, over the BOLO. However, for the reasons stated above, this argument will probably not prevail because the defendant has satisfied the requirements to be convicted for Robbery.

II. Whether we should charge the Defendant with Felony Murder?

On the other hand, the DA's office should probably not charge the Defendant with Felony Murder due to the unforeseeable of the death of Mr. Jeremy Stewart. For the following reasons, the Defendant likely would satisfy the requirements of the killing of another during the commission or immediate flight from the perpetration of a robbery; but the death of Mr. Stewart will likely be deemed to have been caused by an independent intervening cause, which would thwart the likelihood of conviction of the Defendant. Moreover, as our policy is to refrain from overcharging where the evidence is weak, relieving the Defendant of liability arising from felony murder would probably advance our initiatives.

A. Statutory Requirements

Under the Code § 970, First-degree felony murder is a killing of another committed during the perpetration of, attempt to perpetrate, or immediate flight from the perpetration of or attempt to perpetrate any first degree murder, act of terrorism, arson, rape, robbery, burglary, kidnapping, aggravated child abuse, aggravated child neglect, or aircraft piracy.

Moreover, even if it is clear beyond question that the crime was completed before the killing, the felony murder rule still applies if the killing occurs during the defendant's flight. *State v. Clark*. In determining whether the defendant is still engaged in the immediate flight from the felony, it is critical to determine whether the fleeing felon has reached a place of temporary safety. *See Clark*.

For example, in *Id*., the defendant had just completed her burglary, left the residence, and was driving away from it when she hit a pedestrian. The Franklin Court of Appeal determined she had not yet reached her place of temporary safety yet, and therefore, could be convicted of felony murder. *But see Lowery* (illustrating an example of a defendant not engaging in felony murder when he robbed a store, left the store, and arrived at home when a police officer came to the front door to arrest him and the officer's gun went off, killing the defendant's wife).

In our case, it is clear that the defendant committed Robbery for the reasons stated in answer 1. And further, although the Defendant's crime had been completed at the time of Mr. Stewart's death, this would not in and of itself absolve her of liability for felony murder because the Death of Mr. Stewart occurred while he and the Defendant were in the immediate flight from the felony considering they were in the car driving home and had not yet reached a place of temporary safety as described in *Clark*.

However, for the reasons stated below, the Defendant has a strong argument that she should not be convicted of Felony Murder; and further, because our evidence is weak as it pertains to the issue of proximate cause, not charging her of Felony Murder might advance our internal policy.

B. Causation

In addition to the statutory requirements as interpreted by the Franklin courts, to be properly charged with Felony Murder, a defendant must be the actual and proximate cause of death of the alleged victim. *Finch*. Cause in fact is often referred to as "but for causation" - meaning, but for the acts of the defendant, the death would not have resulted. Cause in fact, although essential, is not in and of itself sufficient to establish guilt. *Id.* The defendants act must also be the proximate cause of the victim's death, which adds the requirement of foreseeability. *Id*.

In our case, the Defendant is probably the but-for cause of Mr. Stewart's death considering, but for the robbery of Ms. Owens, the Defendant and Mr. Stewart would probably not have been traveling at that time on that road, and in turn, Mr. Stewart would not have died.

However, to be the legal cause of the victim's death, the relevant inquiry is whether the death is of a type that a reasonable person would see as a likely result of that person's felonious conduct. *Id*. This requirement is added due to the prejudice to the defendant that would arise for holding him or her responsible for outcomes that were totally outside his contemplation when committing the crime. *Id*. Therefore, when a felon's attempt to commit a forcible felony sets in motion a chain of events that were or should have been within his contemplation when it was initiated, he should be held responsible for *any* death that by direct and near inevitable sequence results from the initial criminal act. *Id.; See also State v. Lamb* (holding the intent behind the felony-murder doctrine would be thwarted if felons were not held responsible for the foreseeable consequences of their actions).

Similarly, if there is a sufficient superseding cause - in other words - an intervening independent cause that breaks the causal chain between the defendant's actions and the death, the defendant may be absolved of criminal responsibility. *Finch*. For a cause to be sufficiently superseding and in turn, relieving the defendant from criminal liability due to a break in the causal chain, the following four requirements must be present: 1. the harmful effects of the superseding cause must have occurred before the original criminal acts; 2. the superseding cause must not have been brought about by the original criminal acts; 3. the superseding cause must have actively worked to bring about a result that would not have followed from the original criminal acts; and 4. the superseding cause must not have been reasonably foreseen by the defendant. *Finch*. *See also Craig v. Bottoms*.

Additionally, although the Franklin Supreme Court has not had occasion to analyze superseding cause in the context of felony murder, the Olympia Supreme Court has - in *State v. Knowles*, the Olympia Supreme Court determined that gross negligence should generally be deemed a superseding cause but ordinary negligence should not be considering ordinary negligence is reasonably foreseeable. Gross negligence means a defendant has acted with "wantonness and disregard of the consequences to others that may ensue." *Finch*. (quoting *Knowles*).

For example, in *Knowles,* the defendant stabbed a victim during an armed robbery and subsequently died in the hospital due to an infection in the wounds. However, it was later learned

that the surgeon who operated on the victim was intoxicated at the time of operation and the infection was a direct result of the surgeon's failure to follow disinfection procedures. *Id*. The Olympia Supreme Court held that the surgeon's intoxication constituted a superseding cause absolving the defendant of felony murder.

Here, as the Defendant an Mr. Stewart were driving back after the Robbery of Ms. Owens, Mr. Stewart was driving the speed limit and was struck at an intersection on Route 75. Moreover, despite Mr. Stewart's absence of a seat belt, the fact that all lights were green at the intersection of the accident is probably not sufficient gross negligence to break the causal chain.

Unlike the defendant in *Finch* who killed a co-robber during a tussle with the security guard in an attempt to remove the defendant's firearm, in our case, the harmful effects of the superseding cause of Mr. Stewart's death - the unwavering green lights at all four cross lights had occurred prior to the Robbery of Ms. Owens; and the stop lights were not in any way connected to the Robbery of Ms. Owens; and finally, the death of Mr. Stewart would probably not have been reasonably foreseeable by the Defendant despite a car wreck being reasonably foreseeable considering the fact that stop lights being improperly placed on green at all corners of an intersection is probably sufficiently unforeseeable. However, the green lights might not be deemed to have actively worked to bring about a result that would not have followed by the Robbery considering even if the Defendant had not Robbed Ms. Owens, the lights would still have been malfunctioned. Therefore, the absence of this factor might weigh in favor of charging the Defendant with Felony Murder because the *Finch* Court required the presence of all four elements to break the causal chain. And further, considering there were no complaints of the light prior to the day in question would weigh in favor of the failure to properly maintain the lights being deemed to be foreseeable negligence as opposed to gross negligence because the City had no reason to know of the lights' malfunction.

Nevertheless, the evidence against the Defendant for Felony Murder is shaky, and it might best advance our internal policy to not charge her of Felony Murder considering the unforeseeability of Mr. Stewart's death during the flight from the Robbery. However, the Defendant should probably be charged with Robbery, and we do have at least a good faith basis to charge him with Felony Murder should we choose.

Sample Answer 2

To: Deanna Gray, District Attorney

From: Examinee

Date: February 27, 2024

Re: State v. Iris Logan

MEMORANDUM

Introduction

At issue here is whether indictments should be sought regarding defendant Iris Logan's (hereinafter referred to as "defendant") charges of robbery and felony murder. Here, the charge for robbery should be brought, because defendant acted with the requisite level of force to constitute "violence" as required by the Franklin Criminal Code. However, the charge for felony-murder should not be brought, because the defendant has a strong argument that defendant's conduct in the underlying robbery was neither the cause in fact nor the legal cause of the death of Stewart.

1. **The charge of robbery should be brought against the defendant.**

Defendant's conduct is sufficient to meet the elements of robbery, and therefore, the charge of robbery should be brought against defendant.

Robbery is defined by the Franklin Criminal Code as the "intentional or knowing theft of property from the person of another by violence or putting the person in fear." In Franklin, robbery is a felony. FCC Section 901. A conviction for robbery requires four elements: "1) intentional or knowing nonconsensual taking of 2) money or other personal property 3) from the person or presence of another 4) by means of force, whether actual or constructive."

a. Defendant committed robbery by means of force, whether actual or constructive.

While it is clear from the facts that defendant a) intentionally and knowingly took 2) Owens' purse 3) from Owens, while Owens was wearing the purse over her shoulder, defendant will likely argue that defendant did not act with the requisite level of force such as to constitute violence. However, because defendant taking the purse off of Owens' shoulder such that, in shaking Owens, the motion caused an injury, defendant's argument should not preclude a charge for robbery.

In defining robbery, "while the Franklin statute requires 'violence,' Franklin case law has clarified that, for purposes of defining robbery, 'violence' is coextensive with 'force.'" State v.

Driscoll. Force will constitute the "violence" necessary for robbery when it poses an "immediate danger to the owner of the property." Id., citing State v. Schmidt. Such immediacy may be demonstrated by "putting the victim in fear or by bodily injury to the victim." Id.

In State v. Driscoll, the Franklin Court of Appeal affirmed defendant Driscoll's conviction for robbery where Driscoll struggled with the victim over the theft of a laptop. There, "the owner of the laptop tried to prevent Driscoll from taking her property," grabbing his arm after he picked up the laptop, resulting in Driscoll responsively pushing her away. This struggle was held to be a "sufficient use of force to constitute robbery under 901 of the Franklin Criminal Code. State v. Driscoll. As the court explained, "taking something stealthily without the owner's knowledge is simply theft, but shaking the owner or struggling with the owner while trying to take the item from the owner is robbery." Id.

Here, when asked on direct examination whether defendant threatened Owens, Owens responded that the defendant said, "Let me take your purse," and Owens complied due to an unwillingness to fight. Upon defendant's pulling the purse off of Owens' arm, Owens "got twisted up" and sprained her wrist. As such, defendant will likely argue that defendant did not act with the requisite violence, nor did defendant put Owens in fear of harm, as evidenced by Owens' responses on direct examination. However, this argument will not be likely to overcome the fact that a reasonable jury or trier of fact may find otherwise, given that in the physical taking of the purse, while it does not appear that Owens fought back, there was an entanglement, and thus some resistance, that shook Owens such that Owens sprained her wrist.

Therefore, because defendant's argument that she lacked the requisite force or violence to constitute robbery under Franklin law may fail when presented at trial, the court should proceed with the indictment for robbery.

2. The charge of felony murder should not be brought against the defendant.

Defendant will be able to assert strong arguments that she is not criminally responsible for the death of Stewart because cause in fact and legal cause exist, demonstrating that defendant's actions were not the but-for cause of Stewart's death, and Stewart's death was not reasonably foreseeable to defendant at the time of the robbery.

First-degree felony murder is defined by the Franklin Criminal Code as the "killing of another committed during the perpetration of, attempt to perpetrate, or immediate flight from the perpetration of or attempt to perpetrate any first-degree murder, act of terrorism, arson, rape, robbery, burglary, kidnapping, aggravated child abuse, aggravated child neglect, or aircraft piracy." FCC Section 970.

a. Defendant was still in immediate flight from the felony because defendant did not reach a temporary place of safety.

Defendant's possible argument that the defendant was not in immediate flight from the underlying felony will not suffice, for defendant did not reach a temporary place of safety.

As evidenced by the Franklin Criminal Code, a felony-murder may occur while the defendant is in "immediate flight" from the crime, even if the crime was already completed. FCC Section 970; State v. Clark. The determination of whether a defendant is in flight from the underlying felony is dependent upon "whether the fleeing felon has reached a 'place of temporary safety'"; in other words, there can be no "break in the chain of events." Id.

In the case at hand, driver Jeremy Stewart and defendant, passenger, were driving away from the scene of the purse snatching in a sedan when Officer Torres activated her blue lights in an effort to stop the vehicle pursuant to the information obtained from the BOLO notification, at which time an oncoming SUV entered the intersection, striking the sedan and injuring Stewart. According to the direct examination of Officer Torres, Stewart died from his injuries.

Here, the first argument that defendant may assert against the charge for felony-murder is that defendant and Stewart were not in immediate flight from the underlying felony. In State v. Clark, the Franklin Court of Appeal sustained a conviction where defendant Clark, who had driven away from a residence after burglarizing it, hit a pedestrian who was crossing the street. There was "no evidence that Clark was driving recklessly." State v. Clark. Because Clark had left the burglary and was "on her way to a place of temporary safety," but was still driving her vehicle and "had not yet reached that place," the court found that the requisite break in the chain of events was absent. Id. The court distinguished this case from State v. Lowery, in which the defendant returned home after robbing a store, the police arrived at his house, and the "officer's gun went off, killing the defendant's wife." Id., citing State v. Lowery. There, the defendant was not found to be guilty of felony-murder because he had reached his point of safety. Id.

As such, defendant's argument that she was not in immediate flight from the underlying felony will likely not suffice, as defendant and Stewart were still traveling in their car on the highway at the time the accident occurred, causing the death of Stewart.

b. Defendant's actions during the underlying felony do not satisfy cause in fact or legal cause between the robbery and the death of Stewart.

Franklin's felony-murder rule requires both "cause in fact" and "legal cause" between the defendant's actions in the underlying felony and the resulting death to establish sufficient facts for a conviction. State v. Finch. "Cause in fact" exists when, "but for the acts of the defendant, the death would not have resulted." Id. Limiting cause in fact is "legal cause," for which the relevant inquiry is "whether the death is of a type that a reasonable person would see as a likely result of that person's felonious conduct." Id. A superseding cause may serve to break the causal chain between the underlying felonious conduct and the death resulting from the alleged felony-murder. To demonstrate a superseding cause, the following factors are required: "1) the harmful effects of the superseding cause must have occurred after the original criminal acts, 2) the superseding cause must not have been brought about by the original criminal acts, 3) the superseding cause must have actively worked to bring about a result that would not have

followed from the original criminal acts, and 4) the superseding cause must not have been reasonably foreseen by the defendant." Id., citing Craig v. Bottoms. While "gross negligence will generally be considered a superseding cause," ordinary negligence will not due to its foreseeability. Id., citing State v. Knowles.

i) Cause in fact

As defined by the Franklin Supreme Court in State v. Finch, cause in fact exists where there is but-for causation that the defendant's acts led to the death of the victim. While cause in fact is not sufficient to establish causation, it is a necessary element. Here, defendant will likely argue that the purse snatching and the death of Stewart were too attenuated for there to exist but-for causation. However, it may also be argued that but for defendant's conduct in robbing Owens, defendant and Stewart would not have fled the scene of the robbery, and Stewart would not have died as a result of the collision. Because cause in fact "must be limited by proximate or 'legal cause,'" the inquiry cannot stop here, and must continue into the determination of legal cause.

ii) Legal cause

Foreseeability

Defendant will likely argue that it was unforeseeable at the time of the robbery that Stewart would die from a vehicular collision.

As further defined by the Franklin Supreme Court in State v. Finch, legal cause requires foreseeability, for "it would be unfair to hold a defendant responsible for outcomes that were totally outside his contemplation when committing the offense." State v. Finch. This aligns with Franklin's public policy in ensuring charges are only brought where evidence is strong and sufficient. Only "when a felon's attempt to commit a forcible felony sets in motion a chain of events that were or should have been within his contemplation when the motion was initiated" should he or she "be held responsible for any death" resulting from the criminal act. Id.

In State v. Finch, defendant Finch argued that when Finch and his accomplice attempted to rob a convenience store, the arrival of a security guard constituted an "intervening independent cause that broke the causal chain between his actions in robbing the store and the death of his accomplice." State v. Finch. However, in applying the above-mentioned four factors required to establish a superseding cause, ("1) the harmful effects of the superseding cause must have occurred after the original criminal acts, 2) the superseding cause must not have been brought about by the original criminal acts, 3) the superseding cause must have actively worked to bring about a result that would not have followed from the original criminal acts, and 4) the superseding cause must not have been reasonably foreseen by the defendant") the court found that "the security guard's actions were not a superseding cause of [accomplice's] death" because a reasonable person would foresee a security guard may intervene during the commission or attempted commission of a felony. Id.

Here, defendant may argue that the collision was a superseding cause that broke the chain of causation between the underlying felony and the flight therefrom, and the death of Stewart, for the following reasons: 1) the motor vehicle collision occurred after the robbery, 2) the robbery did not directly bring about the collision, because the two had already left the scene of the robbery, gotten into the sedan, and were in the process of being pulled over by Officer Torres when the vehicle struck them in the intersection, 3) the collision with said vehicle in the intersection was the direct cause of Stewart's death, which had not occurred as a result of the prior robbery, and 4) defendant could not have reasonably foreseen that in driving away from the purse snatching and obeying traffic laws, the two would be struck by an oncoming car in an intersection such that Stewart would be fatally injured.

Because defendant has a strong argument that the four elements of a superseding cause are met here, and therefore foreseeability can be found under the facts, defendant has a strong argument against a charge for felony-murder.

Negligence

While the above demonstrates a strong argument that the requirements for both cause in fact and legal cause are met, defendant may also argue that the driver of the SUV was grossly negligent in entering the intersection and striking the SUV. This is an issue that should be submitted to the jury for a determination of the facts, and should not in and of itself discourage the felony-murder charge from being brought.

Also in State v. Finch, the Franklin Supreme Court discussed that, as held by the Olympia Supreme Court in State v. Knowles, while ordinary negligence will not constitute a superseding cause, gross negligence may, for while ordinary negligence is reasonably foreseeable, gross negligence is not. State v. Finch, citing State v. Knowles. Gross negligence requires "wantonness and disregard of the consequences to others that may ensue." Id. In State v. Knowles, after defendant committed an armed robbery, stabbing the victim twice, the victim was transported to the hospital, where the victim died due to a surgeon's failure to follow disinfection procedures. Id. There, the surgeon's conduct was held to be "gross negligence and therefore was a superseding cause that broke the causal chain between the defendant's felonious acts and the death of the victim." Id.

In arguing that there was insufficient causation between the underlying felony and the death of Stewart, defendant is also likely to further argue that the SUV's conduct in entering the intersection and striking the sedan constituted gross negligence and was therefore a superseding cause sufficient to break the causal chain. Officer Torres states under direct examination that both the sedan and the SUV were traveling within the legal speed limits. However, it is unclear from the facts which vehicle failed to yield at the intersection, and a reasonable jury or trier of fact may find that, under the right circumstances, the SUV was grossly negligent in wrongfully entering the intersection and striking the sedan.

Due to the factual ambiguity in the specifics of the collision, the issue of gross negligence, in and of itself, is insufficient to prevent a felony-murder charge from being brought.

While the defendant was still in immediate flight from the felony, and while it is uncertain whether the driver of the SUV acted in gross negligence, because the defendant will likely assert strong arguments against the presence of cause in fact and legal cause, a charge for felony-murder should not be brought. The question of gross negligence is certainly a question that could be decided by a jury, but Franklin's strong policy of declining to pursue an indictment where evidence is weak tilts the analysis in favor of only pursuing the robbery charge in this case.

Conclusion

Because defendant acted sufficiently to meet the requirements of a robbery conviction in Franklin, but did not act such that the required cause in fact and legal cause may be found to justify a conviction under the felony-murder rule, only the charge for robbery should be brought against defendant.

Sample Answer 3

To: Deanna Gray, District Attorney

From: Examinee

Date: February 27, 2014

Re: State v. Iris Logan

INTRODUCTION

It was been requested that I provide a memo on the Logan case. Below you will find my anaylsis to the following issues: (1) Whether we can charge Logan with robbery; and (2) Whether we can charge Logan with felony murder. My analysis goes into the definition of robbery and the causation standards of felony murder. It also explains any potential defenses and how they do not apply to the facts of the case.

Whether we can charge Logan with Robbery.

Under Franklin law, robbery is defined as "the intentional or knowing theft of property from the person of another by violence or putting the person in fear." Robbery requires proof of four elements: (1) intentional or knowing nonconsensual taking of (2) money or other personal property (3) from the person or presence of another (4) by means of force, whether actual or constructive. State v. Driscoll (Fr. Ct. App. 2019). Here, the elements are satisfied.

Logan, the defendant, intentionally grabbed the purse of Owens, the victim. She told Owens to "let me have that purse," which she did, satisfying the intentional taking of another's personal property. Additionally, the purse was a shoulder bag, located on Owens' person. Defense counsel may argue that element (4) is not satisfied as the taking was not done by "force." In fact, Owens allowed Logan to take her purse without a fight.

However, for purposes of defining robbery, "violence is coextensive with force." The force necessary to constitute robbery is the posing of an immediate danger to the owner of the property. State v. Schmidt (F.r Ct. App. 2009). The immediacy of the danger can be demonstrated whether by putting the victim in fear or by bodily injury to the victim. Defense counsel is likely to argue that Owens was not "put in fear" of Logan, and that the police reported the incident as a "purse snatching" not a robbery. However, the purse snatching resulted in bodily injury to the victim. Owens's wrist was sprained when Logan pulled the purse off her arm. Although reporting officer, Officer Torres did not know the extent of Owens's injury, bodily injury nor force has to be excessive. In Driscoll, the defendant grabbed the victims arm and pushed her away. The victim was not injured, but the struggle for control alone was sufficient use of force. In this case, although there was no "fight", there was an injury that resulted from Owens getting "twisted up"

when she removed the bag from her shoulder. That injury is sufficient to satisfy the bodily injury requirement. Thus, Logan can be charged with robbery.

Defense counsel is also likely to argue that there is limited evidence to whether Logan was the actual perpetrator. However, an eyewitness, Rogers, saw the perpetrator, describing her as "white, medium height, and skinny, with blonde hair. She was waring jeans and a gray T-shirt." He also saw her hand the purse to a man that was standing 10 feet away from him. Rogers immediately provided this description to the police upon the perpetrator running away. Additionally, immediately following the incident, Officer Torres observed a woman matching the description of the BOLO in a green sedan with a man. The defense counsel will claim that Jeremy Stewart, Logan's accomplice, may have been the actual perpetrator. However, Rogers detailed that he saw a woman "ran up behind [Owens] and grabbed her purse." Upon an accident, Officer Torres was able to immediately identify Stewart and Owens as the assailants, as she quickly discovered Owens's purse on the shoulder of the road, thrown out of the vehicle by Stewart. Therefore, there is sufficient evidence to prove Logan was the robber during the accused incident.

Whether we can charge Logan with Felony Murder.

In general, Franklin law provides that a defendant may be charged with felony murder when the defendant's actions in the course of committing, attempting to commit, or fleeing from certain felonies were the cause of the death. The causation required by the felony-murder statute encompasses two distinct requirements: "cause in fact" and "legal cause" (a.k.a. "proximate cause"). State v. Finch (Fr. Sup. Ct. 2008).

Cause in fact: Commonly referred to as "but-for causation": but for the acts of the defendant, the death would not have resulted. "Cause in fact" is not by itself sufficient to establish guilt; it must be limited by proximate cause which adds the requirement of foreseeability. Here, the cause in fact is easily satisfied. But for the parties attempting to flee the scene of the robbery, Stewart's death would not have resulted. However, as stated previously, cause in fact is not sufficient alone to establish guilt. Therefore, legal cause must also be proven.

Legal cause (Proximate cause): The inquiry is whether the death is of a type that a reasonable person would see as a likely result of that person's felonious conduct. It is consistent with reason and sound public policy to hold that when a felon's attempt to commit a forcible felony set in motion a chain of events that were or should have been within his contemplation when the motion was initiated, he should be held responsible for any death that by direct and almost inevitable sequence results from the initial criminal act. It is arguable that Logan's robbery set in motion "a chain of events" that should have been within contemplation as a foreseeable consequence. It is foreseeable that attempting to flee a crime scene in a vehicle may result in a car accident. Defense counsel is likely to argue that the car accident was not foreseeable, that an inspection determined that the traffic lights were in good working order; thus, the resulting car accident was a superseding cause, not the proximate cause to an attempt to flee the scene.

Therefore, the analysis must now fall into whether the car accident that resulted in Stewart's death was a superseding cause that can be used as a defense to felony murder.

The factors necessary to demonstrate a superseding cause are (1) the harmful effects of the superseding cause must have occurred after the original criminal acts, (2) the superseding cause must not have been brought about by the original criminal acts, (3) the superseding cause must have actively worked to bring about a result that would not have followed from the original criminal acts, and (4) the superseding cause must not have been reasonably foreseen by the defendant. Here, "the harmful effect," i.e., Stewart's death occurred after the original criminal acts, Logan's robbery of Owen's purse. Stewart's death did not result from the robbery, but resulted in a car accident after the parties fled the scene. Stewart's death would not have occurred during the purse snatching as the parties were walking down the street on Broadway. However, it is arguable whether a car accident occurring would not be reasonably foreseeable to Logan. Anytime a person is driving on the highway, there is always a risk that one may get into a car accident. Defense counsel will argue that the parties were driving within the speed limit (45 mph) as they traveled through the intersection of State Rouse 50 and State Route 75. Defense counsel will claim that because the car accident "supplants" the Logan's robbery as the legal cause of the Stewart's death, Logan is not legally responsible for the death. Craig v. Bottoms (Fr. Sup. Ct. 1996).

There are arguments to elements (1) and (4): In regards to (1): Even if it is clear beyond question that the crime was completed before the killing, the felony-murder rule still applies if the killing occurs during the defendant's flight. The Franklin statute extends liability for felony murder to deaths occurring "in immediate flight from" the felony. State v. Clark (Fr. Ct. App. 2007). In assessing whether a defendant is still engaged in fleeing from the felony, it is critical to determine whether the fleeing felon has reached "a place of temporary safety." Here, the events occurred "in immediate flight from" the robbery. The parties had not reached a place of "temporary safety" as they were still attempting to flee the scene. Additionally, there was a BOLO that resulted in officers immediately ascertaining the defendant's location.

In regards to (4): Gross negligence will generally be considered a superseding cause, but ordinary negligence will not be regarded as a superseding cause because ordinary negligence is reasonably foreseeable. State v. Knowles (Olympia Sup. Ct. 2000). "Gross negligence" means wantonness and disregard of the consequences to others that may ensue. Here, Officer Torres claims that the traffic lights were malfunctioning because she observed "they were green in all directions." It is for a jury to decide whether they believe that the traffic lights were malfunctioning or not. However, it is ordinarily negligent that a person may die if they proceed on to an intersection where the lights may be malfunctioning without a seat belt on. A car accident occurs on a typical basis, malfunction or no malfunction. It is reasonably foreseeable that one may get into a car accident on the highway, regardless of whether he follows the speed limit. Additionally, it is reasonably foreseeable that one may die from a car accident if he does not wear a seat belt. Thus, the car accident was ordinary negligence, not gross negligence, and not a superseding cause.

CONCLUSION

There is sufficient evidence to prove Logan was the robber during the accused incident. But for the parties attempting to flee the scene of the robbery, Stewart's death would not have resulted. However, as stated previously, cause in fact is not sufficient alone to establish guilt. The parties had not reached a place of "temporary safety" as they were still attempting to flee the scene. Additionally, there was a BOLO that resulted in officers immediately ascertaining the defendant's location. Additionally, it is reasonably foreseeable that one may die from a car accident if he does not wear a seat belt. Thus, the car accident was ordinary negligence, not gross negligence, and not a superseding cause. Thus, the elements are satisfied to charge Logan of robbery and felony murder.

MPT ITEM 2

Sample Answer 1

To: Michael Carter

From: 24004

Date: 2/27/24

RE: Motion for Summary Judgement 1st Amendment Section - Randall v Bristol County

Please find the section for the supporting brief arguing that the county violated Ms. Randall's 1st Amendment Rights by suspending her. The section addresses all elements engaging in protected speech as part of her claim as well as potential responses.

III. Legal Argument

To show that speech is protected under the 1st Amendment, a public employee must show that the employee made the speech as a private citizen and the speech addressed a matter of public concern. (Dunn v City of Shelton Fire Department). After demonstrating both, courts will apply a balancing test between the employee's interest in speech and the employer's interest in promoting effective and efficient public service (Id.)

A. Ms. Randall's posts were made as a private citizen because her employment duties do not include making decisions on renewing financial grants

There are no genuine issues of fact. Ms. Randall's posts were made as a private citizen. When public employees make statements pursuant to their official duties, the employees are not speaking as citizens for the 1st Amendment (Dunn v City of Shelton Fire Department). In other words, there is no protected speech when that speech is made pursuant to the employee's ordinary job duties. Speech is not necessarily made as an employee just because it focuses on a topic related to the workplace (Smith v Milton School District).

Ms. Randall's job duties as the program's director included curriculum and lesson plans, creating materials for eligibility, scheduling, training, procedures for connecting participants with other services, and creating reports to comply with grant requirements. Ms. Randall states that posting on Facebook about the program was not part of her job duties. Nor was making any financial decisions about the program including the decision to renew it. The county will claim that the ability to accept the county's decision is apart of her job duties and posting on Facebook about the decision made the speech as an employee. However, topics related to the workplace do not necessarily made the speech non-private. Marie Cook, county executive, concedes that the decision to renew the grant and financial decisions are her responsibility not Ms. Randall's. Mr. Randall's situation is akin to Pickering v Bd. of Education where a court found that employee's

letter to a newspaper criticizing the her employer's financial decisions was private speech. It cannot be argued that by merely being an employee, there must be absolute agreement on the employer's decisions. Like the employee in Pickering, Ms. Randall has a right to speak out and inform the public about the county's decisions and financial matters. Because the content of the Facebook posts, renewing the grants, were outside of Ms. Randall's ordinary job duties, the posts were made by a private citizen.

B. Ms. Randall's speech is a public concern because they were made in a public setting, alerted citizens of change, and those citizens responded

There is no genuine issue of fact. Ms. Randall's speech was addressing a matter of public concern. Courts will consider three things: the speech's content, the speech's nature (how the employee spoke and to whom, and the context in which the speech occurred (motive and situation).

The content of Ms. Randall's posts addressed a matter of public concern. In Smith, the court found that policies, finances, and decisions are public concern. Complaints about employment situations and work conditions are not public concerns (Smith). The facts of Ms. Randall are different than in Dunn where Mr. Dunn was simply a disgruntled employee. Rather, she was alerting the public of an issue. The county will claim that Ms. Randall was complaining about her employment situation because she would lose her job but this is false. Ms. Randall stated that the loss of her job was not her concern because she would simply go back to her duties at the library. Rather, the motive was so that more citizens could get jobs under the program. The posts were made in a "public square" as in Smith. In Smith, the employee set the posts to public allowing everyone to see them. In Dunn, the posts were only available to internal employees. Ms. Randall's posts were seen by many people, evidenced by the fact that at least a dozen people called the county office. The channel of communication was available to citizens generally (Dunn). As stated, Ms. Randall was motivated by alerting the community about a great program that would not be renewed rather than a selfish desire to keep her post. Her posts clearly outlined the effect on the public and the effects achieved under the program. It is clear that Ms. Randall's speech addressed an issue of public concern.

C. Balancing Test

In proving the two elements of protected speech above, the court should apply the balancing test in favor of Ms. Randall. Courts will consider an employee's interest in expressing speech versus the employer's interest in promoting effective and efficient public service. In Pickering, the court held that calling attention to an important matter of public concern tilts the test in favor of the employee. An employer may have interest in the efficient operation of county government and good morale, Ms. Randall did nothing to affect morale or operation.

While the county's counsel claims that Ms. Randall's conduct may have done so, there is no evidence provided that Ms. Randall's comments affected the county's operations or that morale was hurt. Ms. Cook admits that there was no disruption in the county office. Annoyance

is not enough to favor the employer in the balancing test (Smith). While Ms. Randall did state that the decision not to renew was a "bad call" and that the county executive needed to "get her priorities straight", this alone does not rise to the type of morale damage as in Dunn. In Dunn, Mr. Dunn directly criticized a large portion of firefighters in a field where teamwork and unity are critical. The embarrassment claimed by Ms. Cook is not enough to favor the employer either. Almost all public speech criticizing the government will incur some annoyance or embarrassment (Smith). Ms. Randall's speech engaged citizens of her community about an issue which outweighs the county's concern over operation and morale. Ms. Cook admits that at least a dozen members of the public called about the grant. Whatever trouble Ms. Cook claims to have faced, it does not outweigh Ms. Randall's 1st Amendment rights.

Lastly, the county and Ms. Cook admit that the facebook posts were the only motivating factor behind the suspension. Bristol County violated Ms. Randall's 1st Amendment rights by suspending her.

Sample Answer 2

To: Michael Carter

From: Examinee

Date: February 27, 2023

RE: Randall v. Bristol County Motion for Summary Judgment

III. Legal Argument

A public employee does not surrender all First Amendment rights merely because of their employment status. *Garcetti v. Ceballos*. To show that the speech is protected under the First Amendment, a public employee must demonstrate that (1) the employee made the speech as a private citizen, and (2) the speech addressed a matter of public concern.

A. Plaintiff's Facebook posts were made on her personal Facebook page as a private citizen, and thus are protected under the First Amendment

When a public employees makes statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes. The question is whether the employee made the speech pursuant to [her] ordinary job duties. *Lane v. Franks.* As stated in *Smith v. Milton School District*, speech is not necessarily made as an employee just because it focuses on a topic related to an employee's workplace. There, the court found that just because a teacher tweeted about teaching a lesson in a classroom, which is a part of a teacher's ordinary duties, posting on a personal social media account was not within his duties. Similarly, here, while Plaintiff's posts were about the Work-Force Readiness Program ("the program" or "the grant"), which was a part of her ordinary duties, posting on her personal Facebook page was not. Further, nowhere in County Executive Marie Cook's ("Cook") deposition does she state that posting on her personal facebook page was within Plaintiff's duties.

Plaintiff's speech is easily distinguished from the speech in *Dunn v. City of Shelton Fire Department*. There, the court held that Dunn's speech was made as an employee. The court reasoned that Dunn posted about firefighter education requirements in a Facebook page for first responders. This Facebook page was known among the first responders as a sounding board for gripes and complaints. There is no such evidence to suggest Plaintiff's personal page is a place for employment gripes and complaints.

Further, Dunn's speech was made pursuant to his duties as fire chief because he was consulting with the chief and others on continuing education requirements. The other cases cited in *Dunn* refer to police officers discussing an arrest with prosecutors (*Morales v. Jones*) and an assistant district attorney criticizing a search warrant in an internal memo to a supervisor

(*Garcetti*). In *Dunn*, and its cited authority, the communications were made in a closed group and limited to specific people.

Here, as Plaintiff states in her deposition, these posts were made public and able to be seen by anyone. Plaintiff wanted and intended to reach a wide audience with her statements. Like, in *Pickering v. Bd. of Education*, Plaintiff wanted her thoughts published. There, the letters were posted in the local newspaper, where most citizens at the time got news about local issues. Here, and today, citizens get their news about local issues from Facebook. The Facebook posts, like in *Pickering*, "bore similarities to letters submitted by numerous citizens every day." In fact, based on Cook's deposition, the resulting communications from private citizens were extremely similar in nature, asking to keep the grant.

Based on the above-analysis, it is clear that Plaintiff was speaking as a private citizen. Therefore, her statements in her posts should be given First Amendment protection.

B. Plaintiff's Facebook posts addressed an important matter of public concern, the renewal of the Work-Place Readiness Program, and thus are protected under the First Amendment

To determine whether speech is on a matter of public concern, the court should consider three things: the speech's content (what the employee was saying); the speech's nature (how the employee spoke and to whom); and the context in which the speech occurred (the employee's motive and the situation surrounding the speech).

First, the content of the posts were of a public nature. Matters such as school district financing, public corruption, discrimination, and sexual harassment by public employees have all been found to be matters of public concern. However, complaints about work conditions have not been found to be public concerns. Here the content of the speech focuses on policy, not personal complaints. Both posts describe the grant program and tell citizens how to take action. Further, the only reference to Plaintiff's personal work situation is identifying herself as working on this specific project and the results she has seen from it. Similarly to an instance of school district financing, the content of the speech here is clearly focused on policy, wanting the program to be kept.

Regarding the nature and context of her speech, *Garcetti* held that "Employees who make public statements outside the course of performing their official duties retain some possibility of First Amendment protection because it is the kind of activity engaged in by citizens who do not work for the government. Plaintiff was speaking to the public. As stated in *Smith*, social medias can be a modern-day "public square." Plaintiff could reach the entire community and inform them of the importance of this program. Further, the nature of Plaintiff's speech changed from personal to public when she intentionally made these posts public. As she stated in her deposition, Plaintiff made the post public so "anyone could read them." Unlike in *Dunn*, Plaintiff's posts were not limited in any way. Further, Plaintiff stated in her deposition that she "thought the public should know that the application deadline was about to pass, and this program would

end if the county did not apply to renew it." Again, Plaintiff's motives were for the public, not any personal vendetta or personal gain. Like in *Pickering*, Plaintiff's posts and complaints regarding the grant had no official significance and bore similarities to citizen complaints.

Based on the above-analysis, Plaintiff was clearly speaking on a matter of public concern, and thus her speech should be given First Amendment protection.

C. Plaintiff's interests in informing the public of the Work-force Readiness Program being cut greatly outweigh any annoyance or embarrassment to the County

If it is determined that the employee spoke as a citizen on a matter of public concern, the inquiry moves to a balancing test. As stated above, Plaintiff has spoken as a citizen on a matter of public concern. Therefore, we move to the balancing test.

The court must weigh the interests of the employee in expressing the speech against the employer's interest in promoting an effective and efficient public service.

Next, in important matters of public concerns such as a school districts budget or use of tax revenue, the balance tilts in favor of an employee calling attention to such matters. Here, as stated above, the renewal or non-renewal of this grant will effect whether citizens are able to be prepared for the workforce or get their GED. This is clearly in line with cases where the court has found in favor of the employee such as a school districts budget or use of tax revenue.

Additionally, unlike in Dunn, there are not large concerns with promoting an effective and efficient public service or undermining teamwork needed for the job. Cook's only complaints were having to "deal with the public" which is her job. Cook complains that Plaintiff "stirred up the public" and Cook had her "time wasted" responding to citizen inquiries. Further, Cook states that she was embarrassed. As stated in *Smith*, "annoyance is not enough to favor the employer. Almost all public speech criticizing the government will incur some annoyance or embarrassment." Therefore, Cook's annoyance and embarrassment is not enough to tilt the balance in the employer's favor.

Responding to the public is clearly not an interest to protect public employers from. In fact, public employers are *more* efficient in their public service when they are in contact with the public. As in Smith, there is no evidence here of any slip in productivity or workplace hostility. As Cook stated in her deposition, there have been no disruptions or problems of any kind in any county office since Plaintiff's posts. Cook further admits that she was able to respond to all inquiries made to her and satisfy the citizens.

Since the public employer is not suffering any harm, the balance clearly weighs in favor of the Plaintiff.

D. Upon admission, Plaintiff was suspended because of her Facebook posts, thus her peech was a motivating factor in her suspension

Finally, the employee must show that the speech was a motivating factor in the adverse employment action.

It is undisputed that Plaintiff was suspended because of her Facebook posts. Specifically, Assistant Corporation Counsel for Bristol County, Susan Burns stated in a November 2, 2023, letter to Plaintiff's counsel, "[Plaintiff] was suspended because of her Facebook posts." Therefore, by the COunty's own admission, the causation requirement for the adverse action is met.

Sample Answer 3

III. Legal Argument

Public employees do not give up all of their First Amendment Rights simply because of the nature of their employment. *Garcetti v. Ceballos*, 547 U.S. 410 (2006). An employee who has been improperly retaliated against or disciplined by a public employer for exercising their First Amendment rights as a private citizen is entitled to bring a civil rights action pursuant to 42 U.S.S Section 1983. In bringing such a claim, the burden lies on the plaintiff-employee to demonstrate that the statement was made (1) in the plaintiff's position as a private citizen rather than in their official job duties and (2) that the context and motive for their statements was to address a matter of public concern. If the employee can show this, they must then proceed to show that (1) that the balance of the employee's expression of speech outweighs the public employer's interest in promoting effective and efficient public service and (2) that the speech was a motivating factor in the adverse employment action. Because the plaintiff-employee, Olivia Randall, can demonstrate through undisputed facts that she made statements in her position as a private citizen, that the context and motive of her statements was to bring public attention to an important matter of public concern, that her interest in exercising her speech is greater than Bristol County's interest in promoting effective and efficient public service, and that her suspension was a direct result of her protected First Amendment speech, granting Ms. Randall summary judgment is appropriate in this case.

1. **Randall made statements as a private citizen because she made the posts on her public social media account to a general public audience.**

In order for a public employee's speech to be protected under the First Amendment, it must be made in the employee's role as a public citizen and not in the performance of official duties. The US Supreme Court has established that a public employee making statements pursuant to his or her official duties is not speaking as a citizen for First Amendment purposes. See *Lane v. Franks*, 573 U.S. 228 (2014); *Dunn v. City of Shelton Fire Department (15th Cir. 2018)*. However, just because an employee speaks in a way that focuses on a topic related to an employee's workplace does not mean that the employee is not speaking as a private citizen. See *Smith v. Milton School District* (15th Cir. 2015). To determine whether a statement is made as by the employee as a private citizen or pursuant to their official duties when the speech relates generally to an employee's job, the Court looks to the substance of the speech being made and whether the speech is directly related to the situation or experience of the employee in performance of their job duties or place of employment or whether the speech concerns a matter of public policy that effects the place of employment generally but is ultimately aimed at broader public considerations. See *Smith; Dunn; Garcetti.* The 15th Circuit in Smith acknowledged that the statements made by a school teacher regarding state testing requirements was related to his job duties and ultimately the performance of his job. However, the Court further made clear that the teacher's job duties did not involve posting on social media and that he did not make the statements in connection with his teaching job, but rather to alert the public to his concerns about mandatory state testing through public Facebook posts. This decision was contrasted with

the decision in Dunn. In *Dunn* the Court decided reviewed posts made by an assistant fire chief on a private social media group consisting of all first responders where he was responsible for posting about continuing education requirements. Dunn's posts were gripes aimed at younger generations he viewed as soft and in the Court's view could more clearly be seen as directed criticisms of other first responders that could be taken in Dunn's official duties as chief fire assistant in providing knowledge on continuing education. Unlike Smith, there was no broader issue of public concern and the statements were made in a forum where he was recognized in his official capacities. Because of these reasons, the 15th Circuit determined that Smith's statements were made in his role as a private citizen, while Dunn's were made in his official capacity.

Randall's statements more closely resemble those statements of Smith than Dunn. Randall's statements were made on her Facebook profile, which she made available to a public audience. Randall's statements were made in relation to a grant program that she was the director for. However, like Smith, these statements were not made in her capacity as director of the program. While she also made allusions to the fact that she was director of the grant program, similar to the way that Smith noted he was a teacher, her critiques were at the overall policy decision to make funding available for the grant moving forward. Unlike Dunn, she did not attempt to make the statements to a private audience of others in a similar profession or line of work, but, like Smith, instead sought to bring public awareness to a matter that involves spending of public funds. Therefore, her speech should properly be considered as that of a private citizen.

2. **The content, nature, and context of Randall's speech supports a finding that it addressed a public concern because it involved a matter of public policy that was intended for consideration by members of the general public.**

In order for a public employee's speech to be protected under the First Amendment it must also address a matter of public concern. The Supreme Court in *Garcetti* determined that whether speech addresses a matter of public concern is determined by considering the content, nature, and context of the speech. In determining whether the content of the speech supports a finding that it addresses a matter of public concern, courts have looked at whether the speech appears to address the speakers personal concerns or whether the content of the speech is aimed at broader issues that would be more applicable to general members of the public. The 15th Circuit has examined this differently in *Dunn* and *Smith*. In *Dunn,* the Court observed that Dunn's speech involved his personal views that the younger generations are soft. In the Court's view, these concerns sounded more like those of a disgruntled employee than those of an individual trying to alert the public to a broader public issue. In Smith, on the other hand, the court noted that while Smith may have personal concerns with the policies at issue, the complaints raised were common to other members of the public and were relevant not only to teachers, but to parents, and other members of the public. In determining the nature of the speech, the Court looks at whether the statements appear to be made to the broader public or to a close group that a person might vent their individual frustrations or share an individual view. In *Smith,* the Court acknowledged that social media is becoming the new "town square" similar to how newspapers or local television use to act in public discourse. See *Pickering v. Bd. of Education*,

391 U.S. 563 (1968). On the other hand, while Smith's comments were made on a private page, similar to the private page in *Dunn*, the speech was not protected. Finally, in determining the application of the context of the statement, the Courts have looked at the interplay of the nature and content of the posts. Both Smith and Pickering involved cases in which the speaker made comments in a forum considered to be a public forum or "town square" and related to issues of policy substance rather than workplace conditions. The Supreme Court and 15th Circuit both acknowledged this supports a contextual finding that the intent was to make a statement protected by the First Amendment for the good of the general public, as opposed to criticisms of the personal decisions of superiors or lower employees or general shifts in the workplace.

Here, Randall's statements support a finding that the content, nature, and context support that her statements were made on an issue of public concern and are protected by the First Amendment. Here, Randall's statements were made regarding the policy impacts of the grant program, including the number of people it has helped and the overall community benefits. When asked in her deposition, Randall further acknowledged that her posts had nothing to do with the personal end of her position as director if the grant was not renewed. Instead, she restated that her focus was on helping others get GED and jobs and that she only took this action when calls to discuss the matter and policy objectives failed and it seemed the COunty was seeking to avoid comment. Ms. Cook in her deposition further stated she does not personally know and has not interacted with Randall and there is no personal animus. This looks far more like the policy arguments put forward in Smith than the personal gripes about "softies" in Dunn. In terms of the nature of the communications, Dunn posted publicly on Facebook like Smith and acknowledged in her deposition that anyone could read them. Finally, in considering the context, including these factors, it appears clear that Randall's interest was in raising the issue for public concern and that she did so in a space where the public would be expected to see it. It is also a matter that appeals to public concerns. This is evidenced by the fact that Ms. Cook in her deposition acknowledged that around a dozen citizens called in to the county to discuss the program and advocate for it continuing. Therefore, Ms. Randall's speech should be considered protected by the First Amendment.

3. **Under the balancing test applied to a private citizen speaking on a matter of public concern, Randall's interest in expressing her First Amendment rights outweighed the library's interest in workplace efficiency and employee discipline.**

If a public employee can show they have protected speech, they must then show that the balancing of that interest with the employer's interest in maintaining workplace efficiency and employee discipline favors the employee. Garcetti. In determining this balance the Courts look to see whether the employee's speech was directed at others in the workplace or at the general institution more generally, whether it adversely impacted the business of the employment location, and whether the issue is a matter of public concern. If the matter is one of public concern, the presumption is that the balance favors the employee. Smith. Criticism of other employees may be a factor in favor of the employer, however, mere annoyance of the employer that the employer itself as an institution is criticized is not enough.

Here, Randall's statements are a matter of public concern and the balance therefore presumptively favors her. Ms. Randall did make a direct statement to call Ms. Cook. However, Ms. Randall does not know Ms. Cook and it does not appear this affected moreale. While peiple did respond to the calls, it allowed Ms. Cook a chance to explain department changes to policy towards a new program and was within the limits of the County to effectively handle. Ms. Randall's statements did not affect the overall morale at the library from what we can tell such that her return would cause discord. Ms. Rqndall has also testified that her intent was to bring public concern to the issue, not to embarrass the County, the library, or Ms. Cook. Therefore, the balance reasonably weighs in Ms. Randall's favor and summary judgment would be appropriate to grant in Ms. Randall's favor.

4. **Ms. Randall's suspension at work was clearly due to her comments and therefore is protected in a First Amendment action.**

If a public employee can show that they had protected rights and that the balance of exercising those rights outweighed those of the employer, they must show the adverse action was a result of the comments. In this case Ms. Cook has not disputed that the suspension was a direct result of the comments and this prong is therefore met.

IV. Conclusion

Since Ms. Randall as a public employee can show that she had protected rights under the First Amendment and that the balance of exercising those rights outweighed those of the employer, and that the adverse action was a result of the comments, summary judgment in favor of Ms. Randall is appropriate.